215218

November 29, 2005

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423

RE: STB Docket No. 34795, *Roquette America, Inc. – Petition for Exemption from 49 U.S.C. § 10901 to Construct a New Line of Rail in Keokuk, Iowa*

Dear Secretary Williams:

Please find enclosed for filing the original and ten (10) copies of Roquette America, Inc.'s Verified Petition for Exemption in the above referenced proceeding. Also enclosed is a compact disk containing the electronic version of the written text and exhibits in Word format and PDF format. In addition, the filing fee of $60,800.00 is also enclosed.

Please note that the orginal and the copies contain COLOR IMAGES in Exhibits No. 1, 2, 7 and 8.

An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Jeffrey O. Moreno

BEFORE THE
SURFACE TRANSPORTATION BOARD

215218

STB Finance Docket No. 34795

ROQUETTE AMERICA, INC.—
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901
TO CONSTRUCT A NEW LINE OF RAIL IN KEOKUK, IOWA

VERIFIED PETITION FOR EXEMPTION

Roquette America Railway, Inc. ("Roquette") hereby petitions the Surface Transportation Board ("STB" or "Board"), pursuant to 49 U.S.C. §10502, for an exemption from the approval requirements of 49 U.S.C. §10901 for the proposed construction of a rail line in Keokuk, Iowa. The primary purpose of the project is to establish competitive rail service to a production facility in Keokuk that is owned and operated by Roquette's parent company, Roquette America, Inc. ("RAI"). The Keokuk facility currently is captive to the Keokuk Junction Railway ("KJRY"). The proposed rail construction would connect the facility to the BNSF Railway ("BNSF").

I.
Background

RAI created Roquette for the purpose of constructing the common carrier rail line that is the subject of this exemption petition. RAI is the U.S. subsidiary of Roquette Freres, a leading global producer of starch derivatives and sugar alcohols.

RAI owns and operates two production facilities in the U.S. that produce more than 600 carbohydrate derivatives for a variety of applications. The Keokuk facility produces corn-based starches and syrups used in foods and beverages, paper products, pharmaceuticals, cosmetics,

and agricultural goods. In 2005, RAI employed over 470 people and generated in excess of $300 million in revenue.

The Keokuk facility is a complex consisting of multiple plants erected over the past 100 years. It is located within the city limits of Keokuk, Iowa, along the west bank of the Mississippi River. The facility is at the bottom of a line of bluffs that effectively isolate it from the dwellings and businesses of the city, which are located at the top of the bluff. Exhibit 1 is an aerial photograph of the Keokuk facility that also shows the surrounding structures, roads, rail lines (color coded to distinguish RAI, KJRY and BNSF tracks), and the Mississippi River.

There is a large complex of tracks situated between the Keokuk facility and the Mississippi River. KJRY's main track is closest to the Keokuk facility. BNSF owns most of the remaining tracks, including a mainline track that extends for approximately 55 miles from Fort Madison, Iowa to West Quincy, Missouri. In addition, BNSF's Mooar Line is located just inside the East end of the Keokuk facility. BNSF accesses the Mooar Line from its mainline by crossing over the KJRY track pursuant to authority granted by the Board in Finance Docket No. 33740, *The Burlington Northern and Santa Fe Ry. Co. – Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights*, 2003 STB Lexis 244 (served May 13, 2003).

The Keokuk facility is captive to the KJRY for all rail service. From a rail operations perspective, the Keokuk facility consists of three separate sets of plants served by three distinct rail leads that are not connected, except by the KJRY mainline. Exhibit 2 contains a schematic diagram of these tracks. These tracks also are visible in Exhibit 1. The High Fructose Corn Syrup Refinery and surroundings are served by a lead at the southeast corner of the complex that extends through a floodgate before connecting with the KJRY (referred to as the "HFCS Lead" in Ex. 2). Refineries A and B are served by a double-ended lead track and a connecting stub end

track on the south side of the facility (referred to as the "Plant Lead" in Ex. 2). A third lead track that originates off the KJRY line further downriver extends deep into the Keokuk facility to serve five distinct areas within the complex (referred to as the "Downriver Lead" in Ex. 2).

Because RAI must rely upon the KJRY to move cars between areas within the Keokuk facility that are served by different leads, RAI's own internal operations are inefficient. RAI must request switching service from KJRY, which is not always immediately available at the facility if power and crews are not nearby. Furthermore, because KJRY has not upgraded its track to handle 286,000 pound rail cars, RAI is restricted to using less efficient 263,000 pound rail cars, even when KJRY's role in the transportation is solely to switch cars to and from BNSF.

The Keokuk facility both tenders and receives substantial volumes of various products by rail. In 2005, the facility will receive approximately 500 carloads of processing aids and chemicals, and 2500 carloads of corn and other raw materials. The total shipments of finished goods from the Keokuk facility in 2005 will approximate 6000 carloads. RAI expects these volumes to grow 5% annually. The proposed rail construction project is not expected to increase or decrease these volumes.

Although BNSF is the long-haul carrier for a substantial portion of this traffic, it cannot deliver rail cars directly to, or originate rail cars directly from, the Keokuk facility. Currently, BNSF delivers rail cars loaded with raw materials and chemicals to an interchange track that is a few hundred feet upriver of the facility. KJRY then switches these cars into the facility as needed and places empties back on the interchange track. Loaded outbound cars are held at a KJRY storage yard approximately two miles downriver of the Keokuk facility and then delivered to the interchange track, where the cars are placed into trains. BNSF and KJRY each operate 1-2

trains per day destined to or from the Keokuk facility in this manner. This double-handling of traffic embeds substantial inefficiencies in RAI's operations.

KJRY's rail monopoly over the Keokuk facility is a relatively recent development, having arisen only since 1996. For more than 50 years prior to 1996, both the KJRY and BNSF, or their predecessors, could serve the Keokuk facility pursuant to a series of tri-partite switching agreements between the predecessors of KJRY, BNSF and RAI. The most recent of these agreements, which was dated November 1, 1977, permitted both railroads to directly access the Keokuk facility. This agreement is attached as Exhibit 3 (the "1977 Agreement").

Prior to 1995, both KJRY and BNSF had direct connections to the Keokuk facility. KJRY directly accessed each of the three RAI leads identified in Exhibit 2 from its mainline running along the Mississippi River. BNSF possessed direct access to the "Downriver" and the "Plant" leads in Exhibit 2 from its Mooar Line. BNSF, however, did not have direct access to the upriver lead that serves the HFCS facility. Section 3 of the 1977 Agreement permitted each railroad to use the other's facilities in common to serve the Keokuk facility.

Due to flooding of the Mississippi River in 1993, the City of Keokuk, the Army Corps of Engineers and RAI developed a system of floodwalls to protect the Keokuk facility and adjacent City-owned facilities from future floods. The project, however, required BNSF to relocate its Mooar Line (which previously ran directly through the Keokuk facility) further to the east, which eliminated BNSF's direct access to the Keokuk facility.

To address these changes, all three parties entered into a Supplemental Agreement to the 1997 Agreement, dated September 1, 1995. The Supplemental Agreement is attached as Exhibit 4. Pursuant to Sections 3 and 4 of the Supplemental Agreement, BNSF retained access to all portions of the Keokuk facility that existed prior to the floodwall project (except the HFCS

facility) and it was to have access to any new RAI facilities that may in the future become located along the track within the Keokuk facility. The Supplemental Agreement was to run concurrent with the term of the 1997 Agreement, which remained effective except as modified by the Supplemental Agreement.

Less than a year later, on March 13, 1996, Pioneer Railcorp, a railroad holding company, purchased the KJRY. Problems soon developed in the relationship between KJRY and BNSF. These problems, which have been described in detail in STB Docket No. 33740 (Sub-No. 1), *The Burlington Northern and Santa Fe Ry. Co. – Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights; The Burlington Northern and Santa Fe Ry. Co. – Petition for Determination of Compensation and Other Terms*, 2001 STB Lexis 575 (served June 22, 2001) ("*KJRY Crossing Decision*"), ultimately compelled BNSF to pursue an action before the STB in order to cross the KJRY to retain access to the newly relocated Mooar Line. BNSF's access to the Keokuk facility, however, was not at issue in that proceeding.

Shortly after being acquired by Pioneer Railcorp, the KJRY also attempted to isolate the Keokuk facility from BNSF. In a letter dated May 1, 1996, KJRY notified RAI and BNSF that it would terminate the 1977 Agreement "as to the crossings serving Roquette America, Inc., effective August 1, 1996."[1] *See* Exhibit 5. This eliminated BNSF's ability to serve the Keokuk facility entirely, since BNSF had lost direct access due to the relocation of the Mooar Line. KJRY served this notice at about the same time that it entered into a 10-year contract with RAI, dated May 17, 1996, to provide switching service at the Keokuk facility, which included switching cars to and from BNSF. Because of this 10-year switching contract, there was no immediate competitive impact upon RAI from KJRY's cancellation of the 1997 Agreement.

[1] In a letter dated November 13, 1998, KJRY cancelled the remainder of the 1977 Agreement, which had continued to govern the relationship between KJRY and BNSF. *See* Exhibit 6. That action precipitated the dispute in STB Docket No. 33740 (Sub-No. 1).

However, because that switching contract will soon expire in May 2006, RAI now seeks to re-establish its access to BNSF.

II.

Description of the Project

Roquette desires to construct a common carrier rail line that would both re-establish RAI's competitive connection with BNSF and connect the "Downriver" and "Plant" leads within the Keokuk complex, resulting in more efficient service at a lower cost. As illustrated by the schematic in Exhibit 7, Roquette would construct two segments of rail to connect the two lead tracks and it would make minor reconfigurations to the existing lead tracks. The construction would involve the following activities:

1. Beginning at the Downriver Lead, Roquette would remove the existing connection to KJRY.

2. Roquette would extend the Hub Track (the first stub end track branching off the Downriver Lead) approximately 150 feet further downriver. Within approximately 20 feet of the Fourth Lead, which is owned by KJRY, the downriver Hub Track extension would curve toward the KJRY and connect to the KJRY mainline via a new switch connection. The new switch connection would be at a point approximately 400 feet upriver of the flood wall.

3. Roquette also would construct an upriver extension to the Hub Track that would connect the Hub Track with the downriver end of the Plant Lead.

Roquette intends to purchase from RAI the Hub Track and the "Plant Lead," which would extend the total length of its track to approximately 2000 feet.

Roquette would interconnect with BNSF by crossing the KJRY track at the point of the new switch connection to the KJRY from the "Downriver" Lead. Exhibit 8 is a diagram of the crossing that Roquette plans to construct. The crossing would be a double-turnout configuration that would extend from the newly constructed switch connection with KJRY, across the KJRY track for approximately 180 feet, to a newly constructed turnout onto the BNSF mainline. If

necessary, Roquette will submit a crossing petition to the Board, pursuant to 49 U.S.C. § 10901(d), at a later date.

III.

Roquette's Rail Construction Project Meets the Standards for Exemption Contained in 49 U.S.C. §10502

Under 49 U.S.C. §10502, the Board must exempt the proposed construction of a rail line from the requirements of 49 U.S.C. §10901 if it finds that regulation of the project: (1) is not necessary to carry out the transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) the application of a subdivision of subtitle IV of the Interstate Commerce Commission Termination Act is not needed to protect shippers from the abuse of market power.

Congress enacted the exemption provision contained in the Staggers Rail Act—now codified at 49 U.S.C. § 10502—as a means through which transactions like the one proposed herein by Roquette could be liberated from otherwise applicable cumbersome regulatory processes. *See* H.R. Rep. No. 96-1430, at 105 (1980), *reprinted in* 1980 U.S.C.C.A.N. 4110, 4137. Precedent dictates that the Board should apply its exemption power "boldly" to advance deregulation. *Simmons v. I.C.C.,* 760 F.2d 126, 132 (7th Cir. 1985); *American Trucking Ass'ns v. I.C.C.,* 656 F.2d 1115, 1119 (5th Cir. 1981) ("[T]he Commission is charged with the responsibility of actively pursuing exemptions for transportation and services that comply with the section's standards."). The STB and its predecessor have consistently adhered to this directive. *See, e.g.,* Finance Docket No. 32158, *Gateway Western Railway Company -- Construction Exemption -- St. Clair County, Illinois,* (served May 11, 1993) at 8. *See Class Exemption for the Construction of Connecting Tracks Under 49 U.S.C. §10901,* 1 STB 75, 79 (1996) (presumption that rail construction projects will be approved.)

As discussed below, Roquette's proposed rail line construction project meets the standards of 49 U.S.C. § 10502 and should be exempted from the prior approval requirements of 49 U.S.C. § 10901.

A. Regulation Is Not Necessary To Carry Out The Rail Transportation Policy of 49 U.S.C. § 10101

Regulation of Roquette's construction and operation of the railroad line described herein is not necessary to carry out the rail transportation policy expressed at 49 U.S.C. § 10101. In fact, granting the requested exemption will promote the rail transportation policy through the restoration of competition between KJRY and BNSF to the Keokuk facility and the realization of the attendant benefits of such competition.

For example, in STB Docket No. 34210, *Sunflower Rail Company LLC—Construction and Operation Exemption—Finney County, KS,* (Served March 28, 2003), the Board determined that a rail construction project creating competitive service for the petitioner's parent company would achieve the objectives of the rail transportation policy codified at 49 U.S.C. §§ 10101(1), 10101(2), 10101(4), 10101(5), and 10101(7). Roquette's construction project will similarly advance the rail transportation policies and is therefore equally deserving of an exemption.

First, the proposed project will allow competition and the demand for service to establish reasonable rates for transportation by rail. 49 U.S.C. § 10101(1). Second, an exemption will minimize the need for federal regulatory control over the rail transportation system, by allowing market forces to determine rate and service levels. 49 U.S.C. § 10101(2). Third, construction of the line will promote the development of a sound rail transportation system with effective competition among rail carriers. 49 U.S.C. § 10101(4). Fourth, a promptly issued exemption will reduce regulatory barriers to entry into the rail industry. 49 U.S.C. § 10101(7). Fifth, the proposed line construction will encourage honest and efficient management through market

discipline imposed by direct rail-to-rail competition. 49 U.S.C. § 10101(9). Sixth, the project will help avoid undue concentration of market power and prohibit unlawful discrimination. 49 U.S.C. § 10101(12). Finally, granting an exemption will provide for expeditious handling and resolution of this proceeding. 49 U.S.C. § 10101(15).

The Board and its predecessor previously have exempted similar line construction projects from the prior approval requirements imposed by 49 U.S.C. § 10901, often in instances where the petitioner sought to create competitive rail service. *See* STB Finance Docket 34210, *Sunflower Rail Company, LLC—Construction and Operation Exemption, Finney County KS,* (Served March 21, 2003); STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—For Construction in Will County, IL* (Served March 21, 2002); STB Finance Docket 34002, *Alamo North Texas Railroad Corp.—Construction and Operation Exemption—Wise County, TX* (Served Sept. 3, 2002); STB Finance Docket No. 33782, *Entergy Arkansas and Entergy Rail—Construction & Operation Exemption—White Bluff to Pine Bluff, AR,* (Served May 4, 2000); ICC Finance Docket No. 32630, *Omaha Public Power District—Construction Exemption in Otoe County, NE* (Served May 2, 1995); and ICC Finance Docket 32607, *WFEC Railroad—Construction & Operation Exemption—Choctaw & McCurtain Counties, OK,* (Served Feb 27, 1996). Accordingly, it is proper for the Board to follow precedent in this proceeding and to grant the exemption requested by Roquette.

B. <u>The Proposed Construction Project is Limited in Scope</u>

Roquette's proposed rail line construction project satisfies the second part of the exemption standard because it is limited in scope. The new line construction will be only a few hundred feet long and will be constructed in a highly industrialized area already occupied by tracks of RAI, KJRY and BNSF. The Board has found much larger projects to be of limited

scope. *See* ICC Finance Docket 32607, *WFEC Railroad—Construction & Operation Exemption—Choctaw & McCurtain Counties, OK,* (Served Feb 27, 1996) (14 mile line); ICC Finance Docket No. 32630, *Omaha Public Power District—Construction Exemption in Otoe County, NE* (Served May 2, 1995) (5 mile line), and ICC Finance Docket No. 31989, *The Elk River Railroad, Inc.,—Construction and Operation Exemption—Clay and Kanawha Counties, WV,* (Served May 28, 1992) (30-mile line). Therefore, precedent dictates that Roquette's proposed project is limited in scope within the meaning of 49 U.S.C. § 10502(a)(2)(A).

C. Regulation is Not Necessary to Protect Shippers from Abuse of Market Power.

Because Roquette's proposed transaction is limited in scope, the Board is not required to make the alternative finding, at 49 U.S.C. § 10502(a)(2)(B), that regulation is not needed to protect shippers from the abuse of market power. *See* STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—for Construction in Will County, IL,* (Served March 20, 2002). Nevertheless, in addition to being limited in scope, this project should be granted an exemption because regulation of the project is not necessary to protect shippers from abuse of market power.

By its very nature, Roquette's proposed build out to BNSF is intended to protect Roquette from the abuse of market power through t of a rail transportation alternative to KJRY at the Keokuk facility. Furthermore, the proposed project simply would restore the competitive balance that existed at the Keokuk facility prior to 1996.

Consistent with established precedent, it is appropriate for the Board to find that Roquette's line construction project—which increases rail transportation alternatives—will not subject shippers to abuse of market power. *See* STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—for Construction in Will County, IL,*

(Served March 20, 2002) ("The proposed transaction would provide Midwest, and possibly other shippers that may locate on the line, with an additional rail option, and thus would enable shippers to realize the benefit of increased railroad competition."); STB Finance Docket No. 33782, *Entergy Arkansas and Entergy Rail—Construction & Operation Exemption—White Bluff to Pine Bluff, AR,* (Served May 4, 2000); and, ICC Finance Docket 32607, *WFEC Railroad—Construction & Operation Exemption—Choctaw & McCurtain Counties, OK,* (Served Feb 27, 1996).

IV.

Conclusion

Roquette recognizes the requirement for the Board to undertake an independent environmental evaluation in connection with the proposed exemption, as set forth at 49 C.F.R. § 1105. Accordingly, on June 20, 2005, Roquette representatives consulted with the Board's Section of Environmental Analysis ("SEA") with respect to preparation of an environmental analysis by a third-party consultant. Roquette will continue to pursue its environmental obligations in conjunction with this petition for exemption, including preparation of necessary reports, and will cooperate with the Board to resolve any issues in an expeditious manner.

WHEREFORE, petitioner, Roquette, respectfully requests that the Board issue the exemption herein requested to allow the construction and operation of a new line of rail.

Respectfully submitted,

Nicholas J. DiMichael
Jeffrey O. Moreno
THOMPSON HINE LLP
1920 N Street, NW
Washington, DC 20036
(202) 331-8800

November 29, 2005

VERIFICATION

I, Eric Tibbetts, Logistics Department Manager, for Roquette America, Inc., hereby verify under the penalty of perjury that all of the facts set forth in the attached Petition for Exemption are true and correct to the best of my knowledge. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to $10,000 for each offense.

Eric Tibbetts

Eric Tibbetts

November 28, 2005

EXHIBIT 1

MAP TO BE SCANNED LATER

EXHIBIT 2

Exhibit 2

Roquette Keokuk Complex
Current Track Layout

Roquette Tracks (blue)

Keokuk Junction Tracks (red)

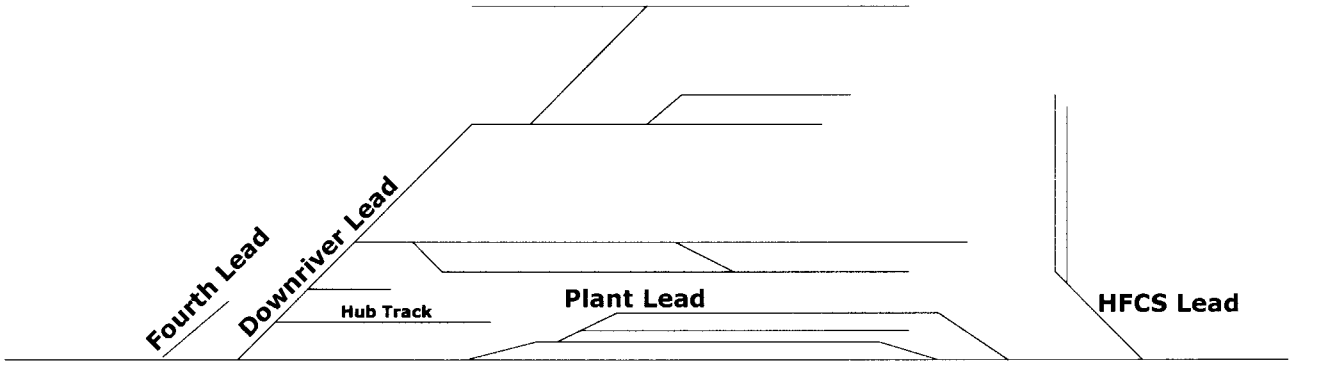

EXHIBIT 3

THIS AGREEMENT, made and entered into this 1st day of November, 1977, by and between BURLINGTON NORTHERN INC., a corporation, hereinafter referred to as "Burlington", WILLIAM M. GIBBONS, Trustee of the property of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, Debtor, hereinafter referred to as "Rock Island", and THE HUBINGER COMPANY, a corporation, hereinafter referred to as "Industry". Said Burlington and said Rock Island shall sometimes hereinafter be referred to collectively as "Railroad Parties", and either of them shall sometimes hereinafter be referred to individually as "Railroad Party".

RECITALS:

There is in effect between the Parties hereto, or their predecessors, agreement dated June 1, 1966, as supplemented by supplemental agreement dated October 1, 1971, covering the ownership, maintenance, operation, and use of certain trackage adjacent to and serving the Industry's plant facilities (sometimes hereinafter referred to as "Plant") in the City of Keokuk, Iowa.

By Bill of Sale of even date, Railroad Parties have sold to Industry certain of the trackage serving said Plant, and it is the desire of all of the parties hereto to terminate said agreement of June 1, 1966, as supplemented October 1, 1971, and to enter into a new agreement to cover the ownership, maintenance, repair, renewal, operation, and use of all of the trackage now situated adjacent to and serving said Plant.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

Section 1 - TERMINATION OF EXISTING AGREEMENTS.

Except as to liabilities accrued thereunder prior thereto, and except as Section 1 providing for termination of previous agreements, said agreement dated June 1, 1966, as supplemented October 1, 1971, shall be and the same is hereby terminated as of the date first herein written.

Section 2 - EXHIBITS - DEFINITIONS.

Attached hereto and hereby made a part hereof is Burlington's Plan No. 112592-G, last revised March 3, 1977 (sometimes hereinafter referred to as "Track Plan"), upon which is shown in

(a) dashed black lines, trackage owned by Rock Island,

(b) dotted black lines, trackage owned by Burlington,

(c) diagonal dashed lines, trackage owned by Industry,

to be used by said Railroad Parties in serving said Plant. Said trackage shall sometimes hereinafter be referred to respectively as "Rock Island Trackage", "Burlington Trackage", and "Industry Trackage". All of said trackage shall sometimes hereinafter be referred to collectively as "Joint Industry Trackage".

Section 3 - GRANT OF RIGHTS

Subject to the provisions of Section 6 hereof, each of the Railroad Parties hereto grants to the other the right to use in common with the granting party the granting party's ownership and interest in said Joint Industry Trackage for the purpose of handling thereupon and thereover cars in the account or possession of such other party consigned to and/or from said Plant or any tenants of Industry in said Plant who may require rail service, without cost or expense to the other Railroad Party hereto. Rock Island, without additional consideration therefor, also grants to Burlington the right to install, maintain, repair and renew, and make additions and betterments, all at the sole cost and expense of Burlington, to that portion of Burlington's crossover track No. 18 as is situated on right-of-way of Rock Island in the vicinity of H Street in said City of Keokuk.

The Industry shall, without expense to either of the Railroad Parties hereto, provide and protect each in the peaceable possession and use of necessary right-of-way for such portion, if any, of said Joint Industry Trackage as is not located upon the premises of either of said Railroad Parties, and shall at any time upon request of either of said Railroad Parties produce all easements, grants, ordinances, and all authorization from regulatory bodies having jurisdiction, which in the opinion of the Railroad Parties or either of them may be required for said right-of-way, said Joint Industry Trackage and the operation thereover and to furnish to each of said Railroad Parties copies thereof. Industry further grants to each of said Railroad Parties, without cost or expense to either, the right to use all of said Industry Trackage in serving the Industry and/or its tenants and in its general railroad business insofar as use of such shall not unreasonably interfere with the business of the Industry and to extend said Industry Trackage or to construct other spurs therefrom for the purpose of serving other industries, provided that such use shall not be detrimental to the Industry, and provided that Industry shall be reimbursed by such other industry or industries as may be negotiated.

Section 4 - MAINTENANCE - TAXES.

Each of the parties hereto shall, at its sole cost and expense, maintain, repair, renew, and remove its solely-owned trackage.

The Industry further agrees to promptly make any changes or alterations in said Industry Trackage that may be necessary in order to conform to any changes of grade or relocation of the tracks of said Railroad Party at the point of connection with said Industry Trackage required by any law, ordinance or regulation, or necessary because of any other reason beyond the control of said Railroad

Party. Industry shall also, at its sole cost and expense, and in a manner satisfactory to each of the Railroad Parties, keep said Industry Trackage clear of snow, ice, weeds or other obstructions.

Each of the parties hereto maintaining any of said Joint Industry Trackage shall be bound to use only reasonable and customary care, skill, and diligence in the maintenance, repair, and renewal of same, and none of the other parties hereto shall, by reason of any defect in said trackage, or by reason of failure or neglect of the Party hereto maintaining the same to repair such defect, have or make against such party any claim or demand for loss, damage or injury arising from such defect, neglect or failure.

Each of the parties hereto shall pay all taxes or assessments levied upon, assessed against or fairly assignable to its sole ownership in said Joint Industry Trackage.

Section 5 - CLEARANCES.

Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said Industry Trackage; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this Section. Industry agrees to indemnify Railroad Parties and save them harmless from and against any and all claims, demands, expenses, costs, and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either, or both, the lateral or vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Railroad Parties from and against any and all claims, demands, expenses, costs, and judgments arising or growing out of loss of or damage to the property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Operations over the track by Railroad Parties with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Industry contained in this Section 5 or of Railroad Parties' right to recover for such damages to property or injury to or death of persons that may result therefrom.

Section 6 - CONDUCT OF OPERATIONS; SWITCHING; LIMITATION OF USE.

Each of the Railroad Parties hereto will conduct its operations over the Joint Industry Trackage in such manner and at such times as shall not endanger or unreasonably interfere with the operation of the other of said parties thereover.

Unless otherwise agreed, each of the Railroad Parties hereto shall perform its own switching service over and upon said Joint Industry Trackage with its own engines and crews and at its sole cost and expense. If in the future it should be the opinion of all of the parties hereto joint switching at said Plant is desirable, a supplemental agreement will be entered into between the Railroad Parties hereto covering joint switching on such terms as may be agreed.

Unless otherwise agreed between the Railroad Parties hereto, the use by each such party of the other's ownership and interest in the Joint Industry Trackage shall be limited to the movement and handling thereover of loaded and empty cars in possession or account of the non-owner Railroad Party to and from said Plant and/or the docks or facilities of any tenant of Industry located in said Plant or any part thereof. No cars handled on said Joint Industry Trackage or any of it shall be confiscated, diverted or interchanged by and between the Railroad Parties hereto while said cars are on any of said trackage without the consent of the Superintendent of the party in whose account the car may be, it being understood and agreed that each party will keep its own cars in its own account and shall be liable for and collect demurrage or any other charges on its own cars, and shall also be responsible for and shall pay any and all per diem which may accrue on all railroad cars while the same are in its possession on said Joint Industry Trackage or any portion thereof, or otherwise.

Section 7 - PICKING UP DERAILMENTS.

Should any engine, train or car of either of the Railroad Parties hereto be derailed or damaged while on said Rock Island Trackage necessitating the use of a wrecking outfit or work train, the same shall be picked up and removed by Rock Island and shall be treated as an item of expense to be borne and assumed under the liability provisions of this agreement.

Should any engine, train or car of either of the Railroad Parties hereto be derailed or damaged while on said Burlington Trackage, the same shall be picked up and removed by Burlington and shall be treated as an item of expense to be borne and assumed under the liability provisions of this agreement.

Should any engine, train or car of either of the Railroad Parties hereto be derailed or damaged while on said Industry Trackage, the same shall be picked up and removed by the Railroad Party hereto in whose train it was being handled at the time it was derailed or damaged and the cost and expense thereof shall be treated as an items of expense to be borne and assumed under the liability provisions of this agreement.

Section 8 - RULES FOR USE OF JOINT INDUSTRY TRACKAGE: COMPLIANCE WITH LAWS AND OTHER PUBLIC REGULATIONS.

Industry agrees to comply with all applicable rules published from time to time by the Association of American Railroads or any successor agency respecting the use of said Industry Trackage and the loading or unloading of cars.

If Industry Trackage is used for the receiving, forwarding or storing of hazardous commodities, Industry agrees to comply with Railroad Parties' requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented, and amended from time to time.

Engines, trains, and cars of the Railroad Parties hereto shall be operated over all or any part of said Joint Industry Trackage as hereinbefore defined under such rules and regulations as the Superintendents of the respective Railroad Parties hereto may agree upon from time to time. Engines and cars of each of said parties hereto shall in such rules and regulations be treated as equal in right with the engines and cars of the other Railroad Party hereto.

Each of the Railroad Parties hereto in respect to its use of the Joint Industry Trackage and the operation of its trains, engines, and cars thereon and thereover shall comply with all applicable Federal and State laws and regulations and all applicable rules, regulations, and orders promulgated by any municipality, board or commission in respect thereto for the protection of persons or otherwise, and if failure on the part of either party hereto to so comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against the other Railroad Party hereto, the Railroad Party hereto responsible therefor shall promptly reimburse and indemnify the other Railroad Party hereto for or on account of such fine, penalty, cost or charge, and all such expenses and attorneys' fees incurred in defending that action which may be brought against such other party hereto on account thereof, and the Railroad Party hereto responsible and liable therefor shall in the event of such action, upon notice thereof being given to it by the other Railroad Party hereto, defend such action free of cost, charge, and expense to such party.

Section 9 - RENDITION AND PAYMENT OF BILLS.

Bills rendered hereunder shall be paid within sixty days after receipt thereof. As between the Railroad Parties hereto, payment of bills shall not be delayed for errors but bills shall be paid as rendered notwithstanding any error of ordinary character liable to occur in railroad accounts, the necessary corrections to be made in subsequent bills; provided that no exception to any bill shall be honored, recognized or considered if filed after the expiration of two years from the last day of the calendar month during which the bill is rendered, and no bill, except settlements relating to liability, shall be rendered later than two years after the last day of the calendar month in which the expense covered thereby is incurred.

With respect to rendition and exchange of billing between said Railroad Parties, billing party may

(a) add to labor and material costs and deduct from credits for material released percentages and charges prescribed by the General Managers' Association of Chicago, Illinois (or any successor association), which are in effect at the time such labor and material is used, and

(b) charge for use of equipment used in the work at rates fixed by the General Managers' Association of Chicago, Illinois (or any successor association), which are in effect at the time such equipment is used, providing if no rate has been fixed by said Association then the billing party may charge for use of such equipment at its Rental of Equipment Rates then in effect.

It is further understood and agreed between all of the parties hereto that payroll taxes, sales taxes, use taxes, and other similar taxes paid by the billing party hereunder shall be billable on the same basis as the labor or material expenses to which they pertain.

Section 10 - CLASSIFICATION OF EMPLOYEES AND EQUIPMENT.

For the purpose of allocating liability hereunder between said Railroad Parties, it is understood and agreed by and between them that

(a) all employees and any engine, machinery, equipment, tools or other property of either of said Railroad Parties, while engaged in or incident to the construction, maintenance, repair or renewal of its exclusive ownership in said Joint Industry Trackage or the making of additions or betterments or extensions thereto or changes therein, or while enroute thereto or returning therefrom, shall be deemed to be the sole employees and sole equipment, respectively, of such party, and

(b) employees, engines, and cars of each of the Railroad Parties hereto engaged in such party's exclusive switching service shall be deemed to be the sole employees, engines, and cars, respectively, of such party, and

(c) all wrecking trains of either Railroad Party hereto, including the equipment thereof, used in clearing up derailments on the Joint Industry Trackage, as well as persons operating the same or assigned thereto, shall, while so engaged or while enroute thereto or returning therefrom, be deemed the sole equipment and sole employees of the Railroad Party hereto responsible under Section 11 hereof for loss or damage growing out of the accidents in connection with which said wrecking trains are provided. The expense resulting from any accident which occurs in connection with the picking up of a derailment shall be treated as an expense of the derailment being picked up and borne by the Railroad Party hereto responsible under the provisions of Section 11 hereof for said derailment, and shall not be treated as a separate liability for loss, damage, injury or death under the provisions of Section 11 hereof.

Section 11 - LIABILITY - ALLOCATION OF

As betweeh all of the parties hereto, it is understood and agreed that the Industry assumes all responsibility for and agrees to indemnify each of the Railroad Parties hereto against loss or damage to property of the Industry or to property upon its premises, regardless of the negligence of either of the Railroad Parties hereto, arising from fire caused by locomotives operated by either of the Railroad Parties on said Joint Industry Trackage or any portion thereof or in its vicinity for the purpose of serving the Industry, except to the premises of the Railroad Parties hereto and to their rolling stock or the rolling stock of others and to shipments in the course of transportation. Industry further agrees to indemnify and hold harmless Railroad Parties hereto for loss, damage or injury from any act or omission of Industry, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation while on or about said Joint Industry Trackage; and if any claim or liability other than from fire shall arise from the joint or concurring negligence or two or more of the parties hereto it shall be borne by them jointly and equally.

As between the Railroad Parties hereto, it is understood and agreed that the cost and expense of any liability for injury to or death of persons whomsoever and for loss of or damage to property whatsoever in connection with the operation, maintenance, repair, and renewal of the Joint Industry Trackage and in connection with the construction or installation of additions and betterments to or extensions or

improvements in the same or in connection with the use of or operation over and upon the same by the Railroad Parties hereto, as contemplated in this contract, that is not borne by Industry pursuant to Section 5 hereof or to the first paragraph of this Section 11, shall, except as otherwise provided, be fixed between the Railroad Parties hereto as follows:

When due to

(a) the acts or omissions of either Railroad Party hereto or of its officers, agents or employees; or to

(b) defects of any kind in the separate equipment or facilities of either Railroad Party hereto,

shall be borne solely by such party;

when due to

(c) the concurring acts or omissions of both Railroad Parties hereto, their officers, agents or employees; or to

(d) defects of any kind in the separate equipment or facilities of both Railroad Parties hereto; or to

(e) any other cause whatsoever

shall be borne

(1) solely by each Railroad Party as to its own property and to property in its custody or control and as to its own employees, passengers, and patrons, and all others on its trains, engines or cars or in, on or about the Joint Trackage in the transaction of business with it; and

(2) jointly and equally by said Railroad Parties as to third persons and their property and said Industry Trackage; except that in cases of accidents in which the trains, engines, cars and/or sole employees of only one of the Railroad Parties hereto are concerned, then the liability for the resulting injury, death, loss or damage shall, as to such persons and property, be borne solely by the Railroad Party hereto whose trains, engines, cars or sole employees were involved or concerned.

Section 12 - MANNER OF SETTLING LOSS AND DAMAGE CLAIMS.

(a) Anything hereinabove to the contrary notwithstanding, no party hereto shall have any claim against any other party hereto for loss and damage of any kind caused by or resulting from interruption or delay to its business.

(b) Each party hereto covenants and agrees with each of the other parties hereto that it will pay for all loss and damage, the risk of which it has herein assumed, the judgment of any court to the contrary notwithstanding, and will forever

indemnify and save harmless the other parties hereto, and their successors and assigns, from and against all liability and all claim therefor, or by reason thereof, and will pay, satisfy, and discharge all judgments that may be rendered by reason thereof and all costs, charges, and expenses incident thereto.

(c) In the event more than one party hereto shall be liable hereunder for any claim, demand, suit or cause of action arising under Section 11 hereof and the same shall be compromised or settled by a voluntary payment of money or other valuable consideration by any other party or parties jointly liable therefor hereunder, release from liability shall be taken to and in the names of all parties hereto which are liable hereunder. No party hereto, however, shall make any such compromise or settlement in excess of the sum of Five Thousand Dollars ($5,000.00) without the authority of the other parties hereto which may be involved hereunder, but any settlement made by any party hereto in consideration of said sum or a less sum shall be binding upon the other parties hereto.

(d) In case a suit or suits shall be commenced against any party hereto for or on account of loss and damage for which any other party or parties hereto are jointly or is solely liable under the terms of this agreement, the party hereto so sued shall give to such other party or parties hereto notice in writing of the pendency of such suit and thereupon, if the party against which suit was brought is not jointly liable, such other party or parties hereto shall assume the defense of such suit and save and hold the party hereto so sued harmless from all loss, cost, and expense by reason thereof.

(e) None of the parties hereto shall be concluded by any judgment against any other party or parties hereto unless it has had reasonable notice requiring it to defend or participate in defense and reasonable opportunity to make such a defense. When such notice and opportunity shall have been given the party or parties hereto so notified shall be concluded by the judgment as to all matters which could have been litigated in such suit.

(f) Reports of all injuries to or death of persons and loss or destruction of or damage to property shall be made in triplicate form and a copy thereof furnished to each of the parties hereto.

(g) All claims and demands arising hereunder for injuries to or deaths of employees or for loss or destruction of or damage to property of any of the parties hereto, shall be investigated by the party hereto whose employee is injured or whose property is damaged, but in the event employees of more than one of the parties hereto are injured, or the properties of more than one of the parties hereto are damaged, the representatives of the parties involved who handle such claims shall agree among themselves as to which one or more of them shall make the investigation; and such representatives

shall determine from time to time which one or more of the parties hereto shall investigate all other claims or demands arising hereunder for loss and damage.

Section 13 - DEFAULTS AND PENALTIES THEREFOR.

(a) If any of the parties hereto shall make default in any of the payments required of it to be made, or shall fail to faithfully perform any of the covenants herein required of it to be performed, then and in such case and if such default or failure shall continue for a period of thirty (30) days after it shall have received a written notice thereof, the party giving such notice may thereupon declare this agreement terminated as to the party in default and exclude such party from the use and enjoyment of the rights and privileges herein granted to it by the party giving such notice. In such event the party so excluded from the use and enjoyment of said rights and privileges shall have no claim or demand upon any of the other parties hereto by suit at law or otherwise on account of such exclusion.

(b) Any party hereto may waive any such default or failure, but no action by it in waiving such a default or failure shall extend to or be taken to affect any subsequent defaults or failures or impair its rights resulting therefrom.

(c) The termination of this agreement shall not operate to relieve any party hereto of or from any of its or their obligations incurred under the provisions of this agreement, or arising out of any transaction occurring under the same prior to the date of such termination.

(d) Nothing in this section contained shall be construed as permitting any party hereto to terminate this agreement with respect to any other party when the fact of such default shall be in dispute or when such default shall be the subject of arbitration or litigation, actual or proposed.

Section 14 - ARBITRATION.

(a) If at any time a dispute shall arise between any of the parties hereto touching the construction of any part of this contract or concerning the business or the manner of transacting business carried on under the provisions hereof or concerning the observance or performance of any condition herein contained or the rights or obligations of any party under or arising from this contract, such dispute shall be submitted to arbitration as hereinafter provided.

(b) Such dispute shall be submitted to a single arbitrator if the parties in dispute are able to agree upon such single arbitrator within ten (10) days after the party desiring such arbitration shall notify in writing the other party or parties to such dispute.

(c) If such single arbitrator cannot be agreed upon before the expiration of such period of ten (10) days and but two of the parties hereto are parties to the arbitration, such

arbitration shall be had before a board of three competent, disinterested persons to be named as follows: The party desiring such arbitration shall select its arbitrator and give notice thereof to the other party, and if such party shall fail to name an arbitrator within twenty (20) days after notice as aforesaid has been so given, the arbitrator named by the party giving such notice may and shall name and appoint an arbitrator for and on behalf of the party so in default and the arbitrator so named and appointed shall have the same power and authority as if he had been chosen by the party so in default. If the two arbitrators thus chosen shall fail to select a third arbitrator within twenty (20) days after the selection of the second arbitrator as aforesaid, such third arbitrator may be appointed upon twenty (20) days' notice by either of the parties to such arbitration to the other party thereto of its intention to make application therefor, by any Judge of the United States District Court for the time being of the district and circuit in which Keokuk, Iowa is situated, who shall be senior in service and willing to act.

(d) The single arbitrator or the board of arbitrators, as the case may be, shall as soon as possible after their selection meet to hear and decide the question or questions submitted to them, and shall give to each party to such arbitration ten (10) days' notice of the time and place of such meeting. After hearing the parties to such arbitration and taking such testimony or making such investigation as they may deem necessary, they shall make in writing their award upon the question or questions so submitted to them and shall serve a copy of such award upon the parties to such arbitration, and the award of such single arbitrator or of a majority of said board of arbitrators, as the case may be, shall be final and binding upon the parties to such arbitration, and they shall immediately make such changes in the conduct of their business or such payment or restitution as in and by such award may be required of them. The award made in any arbitration proceedings under this agreement shall be absolutely final and binding upon the parties to such arbitration and they shall abide thereby and perform the conditions thereof as if the same were made a part of this agreement.

(e) The books and papers of each party to such arbitration so far as they may relate to the matters submitted to arbitration shall be open to the examination of the arbitrator or arbitrators. Each party to the arbitration shall be responsible for the compensation of the arbitrator acting on its behalf and compensation of the additional arbitrator or arbitrators shall be divided equally between, and paid by, the parties interested in such arbitration. Until the arbitrator or arbitrators shall make their award the business, settlements, and payments to be transacted and made under this agreement shall continue to be transacted and made in the same manner and form existing prior to the rise of such dispute.

(f) If the question at issue affects more than two of the parties hereto, the required notice of a demand for arbitration shall be given to each party interested and each party, except in the cases covered by the next paragraph of this Section 15, shall within twenty (20) days thereafter name an arbitrator having the qualifications hereinbefore stated; otherwise the said arbitrator shall be appointed by the Judge as aforesaid. The arbitrators so chosen, if an even number, shall select one, if an odd number, two additional arbitrators having the qualifications before stated to complete the board. Should they fail to agree upon such additional arbitrators the same shall be appointed by the Judge as aforesaid. Such board shall proceed in the manner as if but two parties were interested and its award or an award of a majority thereof shall be final, binding and conclusive upon the parties interested in such arbitration.

(g) If the question at issue affects all of the parties hereto, and two of said parties are making the same contention and are on the same side of the question at issue they shall be considered as one party and shall have the right to appoint but one arbitrator.

(h) If any party shall refuse to perform any award the adverse party or parties may enforce the same by apt proceedings in any court of law or equity.

Section 15 - NOTICES.

Any notice herein provided for shall be in writing and shall be given by serving of the same upon the executive officer designated by any of the parties hereto for such purpose.

Section 16 - SUCCESSORS AND ASSIGNS.

The rights, covenants, and agreements herewith set forth shall attach to and run with the lands and properties of the parties hereto that are involved herein and shall inure to the benefit of and be binding upon the parties hereto, their respective successors, grantees, lessees, and assigns; provided, however, that no party hereto shall assign this agreement or any interest herein, nor permit the rights or privileges herein granted to it, or any of them, to be used for the benefit or accommodation of any other person, corporation or railroad without the previous written consent of the other parties hereto.

Whenever reference is made herein to The Hubinger Company, the same shall also be deemed to include any successors and/or assigns of said Company.

Section 17 - PROVISIONS ARE SEVERAL; LIABILITY FOR DEFAULT.

It is expressly understood and agreed that all of the covenants and agreements to be performed by the parties hereto under this agreement are several and not joint nor joint and several, and in no event shall any party hereto be liable for a default of any other party hereto.

Section 18 - AGREEMENT TO BE CONSTRUED LIBERALLY-NOT FOR THE BENEFIT OF THIRD PARTY.

This agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges, and benefits herein provided or manifestly intended. This agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party.

None of the parties hereto shall be required to keep this agreement in effect if prevented from doing so by strikes, riots, civil commotions or other causes beyond its control, or if said Joint Industry Trackage or any portion thereof is made unserviceable by floods, high water or other damage by the elements, an Act of God or by acts of military aggression by third persons or other governments.

Section 19 - EFFECTIVE DATE - TERM.

This agreement shall become effective as of the date first herein written and shall remain in full force and effect until terminated by any of the parties hereto on not less than three months' written notice to the other parties hereto.

Section 20 - SECTION HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate as of the day and year first above written.

BURLINGTON NORTHERN INC.

By _____
Senior Vice President-Operations

WILLIAM M. GIBBONS, Trustee of the Property of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, Debtor

Witness:

_____
Assistant Secretary

By _____
Manager Operating Contracts

THE HUBINGER COMPANY

ATTEST:

_____
C. W. Brackensick
Secretary

By _____

EXHIBIT 4

COPY

SUPPLEMENTAL AGREEMENT

This SUPPLEMENTAL AGREEMENT made this 1st day of Sept., 1996, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", KEOKUK JUNCTION RAILWAY, an Iowa corporation, hereinafter called "KJR" and ROQUETTE AMERICA, INC., hereinafter called "INDUSTRY". Said Burlington and said KJR shall sometimes hereinafter be referred to collectively as "Railroad Parties, and either of them shall sometimes be referred to as "Railroad Party".

WITNESSETH:

WHEREAS, Burlington (as successor to Burlington Northern Inc.), KJR (as successor to Chicago Rock Island And Pacific Railroad Company) and Industry (as successor to The Hubinger Company) are parties to an agreement dated November 1, 1977 "Original Agreement" (BN9633), which principally deals with ownership, maintenance, operation and use of certain trackage adjacent to and serving the Industry's plant facilities (sometimes hereinafter referred to as "Plant" in the city of Keokuk, Iowa;

WHEREAS, Changes to certain Plant track and Railroad Parties track have become necessary in connection with Industry's flood control project, the "Project";

WHEREAS, The parties hereto desire to setforth herein the post Project ownership, maintenance and operation of the trackage adjacent to and serving the Plant;

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth, it is mutually agreed by and between the parties hereto as follows:

1. Attached hereto, marked exhibit "A", and made part hereof is print dated June 28, 1995, which shall substitute the Track Plan made part of the Original Agreement, upon which is shown in dashed black lines, trackage owned by KJR, dotted black lines, trackage owned by Burlington, diagonal dashed lines, trackage owned by Industry, to be used by Railroad Parties in serving said Plant. Said trackage shall sometimes hereinafter be referred to respectively as "KJR Trackage" and "Industry Trackage". All of said trackage shall sometimes hereinafter be referred to collectively as "Joint Trackage".

2. The parties hereto entered into a letter of understanding "Letter of Understanding", dated January 11, 1995, covering exchange of property, track changes, maintenance and other matters. If any conflict between the Letter of Understanding and this Supplemental Agreement shall arise, the provisions of this Supplemental Agreement shall prevail.

3. The Railroad Parties shall continue to maintain access to all Industry facilities that existed prior to the Project. Burlington shall not have the right to access Industry's High Fructose Facility via the KJR Trackage.

4. The Railroad Parties shall have access to any new Industry facilities that may in the future become located along the Industry Trackage.

5. Burlington will continue to maintain the existing diamond, as shown at point "A" on exhibit "A", at Burlington expense. If BN fails to maintain the diamond, KJR may upon giving Burlington thirty (30) days written notice maintain the diamond at Burlington's expense.

6. Burlington's access to its Moar Line shall be from the new crossover opposite the Burlington's Yard Office, thence over KJR Trackage that includes seven switches. As consideration for Burlington's use of KJR track and switches, Burlington will pay to KJR the following sums annually: ONE THOUSAND FIFTY DOLLARS AND NO CENTS ($1,050.00), representing one half (1/2) of THREE HUNDRED DOLLARS AND NO CENTS ($300.00) per switch, commencing in 1996, this rate of $1,050 per annum shall be considered the "Base Rate". The Base Rate shall be subject to annual adjustments, beginning July 1, 1996, in the following manner: Seventy percent (70%) of such Base Rate ($735.00), representing maintenance and operating expense and depreciation, shall be increased or decreased based on the relationship of the Association of American Railroads (or successor organization) Railroad Cost Recovery Index, West District (material prices, wage rates and supplements combined, excluding fuel) for the year 1994 as compared with such similar index for each subsequent year, but in no event shall the adjusted monthly rate be less than said Base Rate. The balance of the rate (30%) representing interest rental and taxes shall be fixed.

7. Any party hereto may assign any receivables due them under the Original Agreement, as supplemented, provided, however, such assignments shall not relieve the assignor of any rights or obligations under the Original Agreement, as supplemented.

8. Other than as specifically modified herein the Original Agreement, as supplemented shall remain in full force and effect.

9. This Supplemental Agreement shall take effect upon the day the industry Project is completed and the Railroads first commence operation over the Joint Trackage and shall remain in effect concurrent with the term of the Original Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed in duplicate as of the date and year first hereinabove written.

BURLINGTON NORTHERN RAILROAD COMPANY

By_____

Title_____

KEOKUK JUNCTION RAILROAD COMPANY

By J. L. Warfield

Title President

ROQUETTE AMERICA, INC.

By Robert J. Deland

Title President

Burlington's access to its Joint Line shall be from the new crossover opposite the Burlington's Yard Office, thence over KJR Trackage that includes seven switches. As consideration for Burlington's use of KJR track and switches, Burlington will pay to KJR the following sums annually: ONE THOUSAND FIFTY DOLLARS AND NO CENTS ($1,050.00), representing one half (1/2) of THREE HUNDRED DOLLARS AND NO CENTS ($300.00) per switch, commencing in 1995, this rate of $1,050 per annum shall be considered the "Base Rate". The Base Rate shall be subject to annual adjustments, beginning July 1, 1996, in the following manner: Seventy percent (70%) of such Base Rate ($735.00), representing maintenance and operating expense and depreciation, shall be increased or decreased based on the relationship of the Association of American Railroads (or successor organization) Railroad Cost Recovery Index, West District (material prices, wage rates and supplements combined, excluding fuel) for the year 1994 as compared with such similar index for each subsequent year, but in no event shall the adjusted monthly rate be less than said Base Rate. The balance of the rate (30%) representing interest rental and taxes shall be fixed.

7. Any party hereto may assign any receivables due them under the Original Agreement, as supplemented, provided, however, such assignments shall not relieve the assignor of any rights or obligations under the Original Agreement, as supplemented.

8. Other than as specifically modified herein the Original Agreement, as supplemented shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed in duplicate as of the date and year first hereinabove written.

BURLINGTON NORTHERN RAILROAD COMPANY

By John F Beacom

Title Dir. Contracts and Jt Facilities

KEOKUK JUNCTION RAILROAD COMPANY

By J L Warfield

Title President

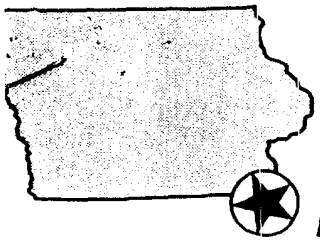
ROQUETTE AMERICA, INC.

By Robert J. DeLand

Title President

Post-it™ Fax Note 7671 Date 9-7 # of pages ▶ 2
To Ron Wills From Bill Mudd
Co./Dept. Co. Phone # Fax #
Phone # Fax #

EXHIBIT 5



Keokuk Junction Railway

1318 South Johanson Road • Peoria, Illinois 61607 • (309) 697-1400

May 1, 1996

Mr. Douglas J. Babb,
Senior Vice President and Chief of Staff
Burlington Northern Railroad
777 Main Street
Fort Worth, Texas 76102

RE: Crossing/Switching Agreement at Keokuk, Iowa

Dear Mr. Babb:

Keokuk Junction Railway Co. ("KJRY"), as successor to the Chicago, Rock Island & Pacific Railroad Company ("CRI&P"), hereby gives notice, pursuant to Section 19 of the Agreement dated November 1, 1977 between CRI&P, Burlington Northern, Inc. (of which Burlington Northern Railroad Company is successor) and The Hubinger Company (of which Roquette America, Inc. is successor), and pursuant to Section 9 of the Supplemental Agreement between the parties dated September 1, 1995, that KJRY is exercising its right to terminate the Agreement as to the crossings serving Roquette America, Inc., effective August 1, 1996.

This does not effect the crossing which the BN uses to access the "Mooar Line" (as agreed to in the Crossing Agreement dated March 13, 1996).

KJRY feels that, given the competitive changes wrought by the BN-ATSF merger, the current crossing/switching agreement at Keokuk is inequitable to KJRY.

We are willing to meet with you in Keokuk, or wherever else is convenient to do so, to discuss future operations at Keokuk. We are hopeful that a new arrangement, which is fair and beneficial to both KJRY and BN can be worked out.

Sincerely yours,

Guy L. Brenkman,
President.

cc: Roquette America, Inc.

EXHIBIT 6

Keokuk Junction Railway
1316 South Johanson Road • Peoria, Illinois 61607 • (309) 697-1400

November 13, 1998

Director, Contracts and Joint Facilities
Burlington Northern Railroad Company
2606 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Dear Sir or Madam:

BNSF, as successor to Burlington Northern, Inc., and Keokuk Junction Railway Co., as successor to the Chicago, Rock Island & Pacific Railroad Company, Inc., are parties to an Agreement dated November 1, 1977, as supplemental by a Supplemental Agreement dated September 1, 1995, and a Crossing Agreement dated March 13, 1996.

These agreements, collectively, govern the BNSF's use of the KJRY's trackage in Keokuk, Iowa to access the BNSF's "Moar" Line.

We have several concerns about the current arrangement, including the BNSF's failure to get approval to use the trackage (as provided in Section 2 of the Crossing Agreement), and the unrealistically low fee which KJRY receives.

We are therefore, advising you of our desire to negotiate a new arrangement, and are hereby giving notice of the termination of the current agreement, as per Section 19 of the Agreement, effective March 1, 1999.

KJRY desires to maintain a good working relationship with BNSF, and we are confident that an arrangement acceptable to both can be worked out.

If the current agreement terminates without a new agreement in place, KJRY stands ready to provide an intermediate switch to BNSF traffic to and from the Moar Line under our tariff rates.

We look forward to discussing this matter with you, and concluding a new agreement that is satisfactory to both parties.

Sincerely yours,

Guy L. Brenkman,
President.

cc: Henry B. Lampe.

EXHIBIT 7

Exhibit 7

Roquette Keokuk Complex
Proposed Track Layout

Roquette Tracks (blue)

Keokuk Junction Tracks (red)

Added Trackage (green dashes)

Removed Trackage (black dashes)

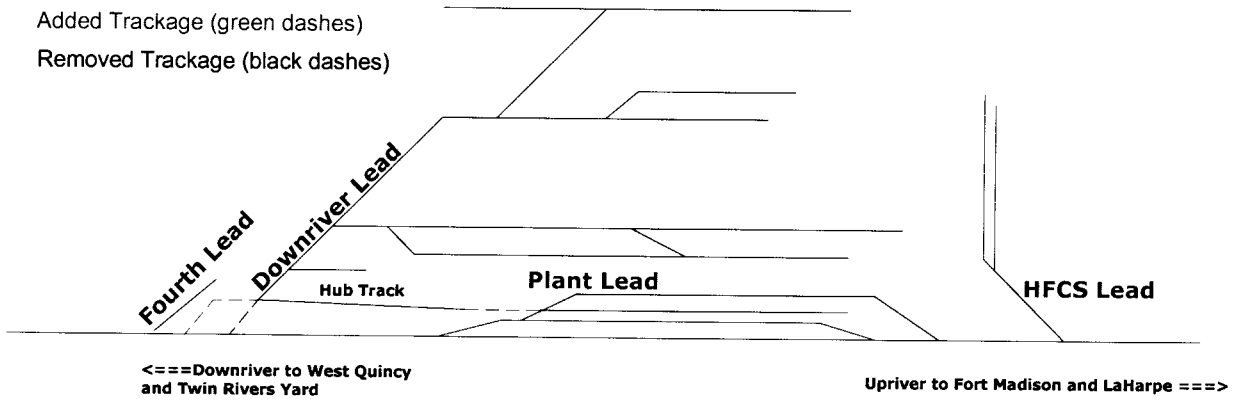


EXHIBIT 8

Exhibit 8

Description of KJRY Crossing

Roquette Track

KJRY Track

BNSF Track

Roquette Crossover